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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/078,920	02/20/2002	P. T. Barnum	MASIMO.307A	4765
20995	7590	02/26/2004	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP			LAUCHMAN, LAYLA G	
2040 MAIN STREET			ART UNIT	
FOURTEENTH FLOOR			PAPER NUMBER	
IRVINE, CA 92614			2877	

DATE MAILED: 02/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/078,920	BARNUM ET AL.	
	Examiner	Art Unit	<i>AW</i>
	L. G. Lauchman	2877	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2,7,12-14 and 16 is/are rejected.
- 7) ☐ Claim(s) 3-6,8-11,15 and 17-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |  |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)            |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date ____ | 6) <input type="checkbox"/> Other: ____  |

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 7, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Le Roy (US 4,077,399).

As to Claim 1, Le Roy teaches a transillumination device comprising (see Fig. 1 and Fig. 2):

a light emitting device 18 configured to emit light (see col. 1, lines 56-68);

a first securement device (cup) 12 attached to the light emitting device (col. 1, lines 56-68);

a detector 22 configured to detect the light received from the light emitting device and generate a current based on the amount of light detected (col. 1, lines 56-68, col. 2, lines 23-26);

a second securement device (cup) 14 attached to the detector (col. 1, lines 56-68); and

an adjustable band 16 having a first end connected to the first securement device 12 and a second end connected to the second securement device 14, the band

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configured to align the light emitting device and the detector (see col.1 , lines 66-68, and col. 2, lines 21-23, lines 40-45, lines 65-67).

As to Claim 2, Le Roy teaches everything as applied to Claim 1, and in addition the adjustable band 16 is a two piece adjustable band (29 and 28), a first piece 29 having means for attaching to a second piece 28 of the adjustable band (see col. 2, lines 3-9).

As to Claim 7, Le Roy teaches a transillumination device comprising (see Fig. 1 and Fig. 2):

a first securement device (cup)12 attached to the light emitting device 18 (col. 1, lines 56-68);

a second securement device (cup) 14 attached to the detector 22 (col. 1, lines 56-68);

a band 16 having a first end connected to the first securement device 12 and a second end connected to the second securement device 14, the band configured to align the light emitting device and the detector (see col. 2, lines 21-23, lines 40-45, lines 65-67).

As to Claim 16, Le Roy teaches a transillumination device comprising (see Fig. 1 and Fig. 2):

a light emitting device 18 configured to emit light (see col. 1, lines 56-68);

a detector 22 configured to detect the light received from the light emitting device and generate a current based on the amount of light detected (col. 1, lines 56-68, col. 2, lines 23-26);

a two-piece adjustable band 28 and 29 (see col. 2, lines 3-9) having a first end configured to be connected to the light emitting device 18 and a second end configured to be connected to the detector 22.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 12, 13, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Le Roy (US 4,077,399) as applied to claim 7 above.

As to Claims 12 and 13, Le Roy teaches everything as applied to Claim 7. The patent does not specifically disclose that the first and the second ends of the band 16 are detachable from the cups 12 and 14. Nevertheless, the patent discloses that the

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cups 12 and 14 are pivotally connected to their respective plate 29 on the band 16 (see col. 2, lines 13-15). For that reason, the cups would be detachable from the band 16. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to provide the cups 12 and 14 detachable from the band 16 in order to clean or replace them.

As to Claim 14, Le Roy teaches everything as applied to Claim 7. The patent does not specifically disclose that the band is being perforated at the first and the second ends for removal of the band. However, the patent discloses that the cups 12 and 14 are pivotally connected to their respective plate 29 on the band 16 by shaft 32 (see col. 2, lines 13-15). Therefore, the band 16 has holes on both ends of the plate 29 for attaching the cups 12 and 14 to the member 29 (see col. 2, lines 3-5). It would have been obvious to one of ordinary skill in the art at the time of the invention to remove or detach the band from the cups in order to clean or replace the cups 12 and 14.

### ***Allowable Subject Matter***

Claims 3-6, 8-11, 15, 17-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: As to Claim 3, the prior art of record taken along or in combination, fails to disclose or render obvious a first piece of the adjustable band having a plurality of pegs and a second piece having a plurality of openings, the plurality of pegs configured to be

removable attached to the plurality of openings, in combination with the rest of the limitations of claim 1.

As to Claim 4, the prior art of record taken along or in combination, fails to disclose or render obvious an extender having a first end attached to the first securement device and a second end free from attachment, in combination with the rest of the limitations of Claim 1.

As to Claim 5, the prior art of record taken along or in combination, fails to disclose or render obvious a first button attached to the first securement device and a second button attached to the second securement device, in combination with the rest of the limitations of Claim 1.

As to Claim 8, the prior art of record taken along or in combination, fails to disclose or render obvious an extender having a first end attached to the first securement device and a second end free from attachment, in combination with the rest of the limitations of Claim 7.

As to Claim 10, the prior art of record taken along or in combination, fails to disclose or render obvious a first button attached to the first securement device and a second button attached to the second securement device, in combination with the rest of the limitations of Claim 7.

As to Claim 15, the prior art of record taken along or in combination, fails to disclose or render obvious the band having a perforation that is located in the middle section of the band, in combination with the rest of the limitations of Claim 7.

As to Claim 17, the prior art of record taken along or in combination, fails to disclose or render obvious an extender having a first end attached to the first securement device and a second end free from attachment, in combination with the rest of the limitations of Claim 16.

As to Claim 18, the prior art of record taken along or in combination, fails to disclose or render obvious a first button attached to the first securement device and a second button attached to the second securement device, in combination with the rest of the limitations of Claim 16.

As to Claim 20, the prior art of record taken along or in combination, fails to disclose or render obvious the first end of the band configured to be attached and detached from the second end of the band, in combination with the rest of the limitations of Claim 16.

As to Claim 21, the prior art of record taken along or in combination, fails to disclose or render obvious the two-piece adjustable band has a first piece of the adjustable band having a plurality of pegs and a second piece having a plurality of openings, the plurality of pegs configured to be removable attached to the plurality of openings, in combination with the rest of the limitations of Claim 16.

### ***Conclusion***

Papers related to this application may be submitted to Technology Center 2800 by facsimile transmission. Papers should be faxed to TC 2877 via the PTO Fax Center located in CP4-4C23. The faxing of such papers must conform with the notice



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published in the Official Gazette, 1096 OG 30 (November 15, 1989). The CP4 Fax Center number is (703) 872-9306.

If the Applicant wishes to send a Fax dealing with either a Proposed Amendment or for discussion for a phone interview then the fax should:

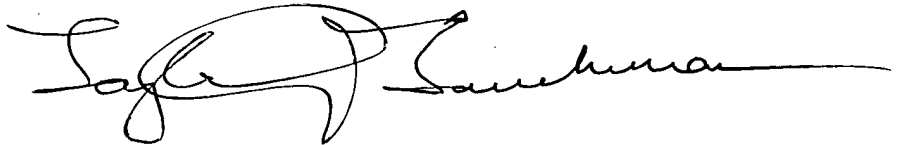
a) Contain either the statement "DRAFT" or "PROPOSED AMENDMENT" on the Fax Cover Sheet; and

b) Should be unsigned by the attorney or agent.

This will ensure that it will not be entered into the case and will be forwarded to the examiner as quickly as possible.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to L. G. Lauchman whose telephone number is (571) 272-2418.

Any inquiry of a general nature or relating to the status of this application should be directed to the TC receptionist whose telephone number is (571) 272-1562.

A handwritten signature in black ink, appearing to read 'L. G. Lauchman', with a long horizontal flourish extending to the right.

L. G. Lauchman  
Patent Examiner  
Art Unit 2877  
2/4/04/lgl